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An analysis of intervention in child protection from the perspective of the child's resilience in Romania

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Abstract

Resilience could be the antidote to current paradigms oriented too much towards studying and understanding the causes of disease pathology. Starting from this position, our study aims to analyze the relationship between intervention and prevention in the child protection system in Romania and its reconsideration in the light of child resilience (assisted or not). The study is an excerpt from the theoretical analysis of intervention in child protection as a step in the clinical sociology of social protection intervention that bases its subsequent operational intervention on a major paradigm shift on human beings.

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1. Introduction

Originally conceived by Milton C. Winternitz in 1930 in order to facilitate the social rehabilitation of patients, clinical sociology is rapidly approaching of what it is today. Thus, if already in 1931 the American sociologist Louis Wirth characterized it as one of the main areas of sociology, today clinical sociology has a distinct orientation in the sociology of social problems "aimed at three main objectives: a) "clinical" analysis of a collective state of critical embodied in a diagnosis made by experts, who believe the condition was an issue of social life, b) research into the causes and conditions that determine the state, evaluation of the public opinion, policies and practices on existing social improvement and its eradication; c) practical intervention activities aimed at providing operational solutions." (C. Zamfir, 1993: 576). We believe that one of the phenomena of nature increasingly critical is generated by child protection, focusing on child protection intervention.

In order to generate a practical intervention activity aiming to provide operational solutions, we need to attend the first two stages of clinical sociology of intervention in child protection in Romania: clinical (theoretical) analysis of the intervention and research into the causes and conditions.

This study is part of the first stage: the analysis of clinical intervention.

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2. Analysis of legal intervention in child protection in Romania

2.1. Analysis of the law of intervention

In order to analyze the situation in Romania, we believe that we should start to Article 5 of Law no. 272 of June 21, 2004 on the protection and promotion that states prioritize the accountability for the welfare of such child. "(1) Children are entitled to protection and assistance in the development and full exercise of their rights under this law.

(2) Responsibility for ensuring growth and child development is primarily for the parents, they have the obligation to exercise rights and fulfill their obligations towards the child taking into account the priority interests of the child.

(3) In the alternative, the responsibility lies with the local community which includes child and family. *Local authorities have the duty to assist parents or, where appropriate, the legal guardian of the child in achieving their obligations towards the child, developing and providing accessible and quality services for this purpose, appropriate to the child's needs.* (our emphasis)

(4) State intervention is complementary; state child insures protection and guarantees that all the rights through a specific activity carried out by public bodies and public authorities with responsibilities in this area will be respected. "(Article 5, Law 272/2004)

It results that outside legal accountability of parents (informal sanctioning actually assumed responsibility procreation), first called in to organize such services meet the needs of children are local authorities. These, however, under Article 12 of Ordinance no. 68 of August 28, 2003 on social services, can organize only primary social services. According to the same ordinance text, basic social services are social services aimed at preventing or limiting situations of difficulty or vulnerability, which can lead to marginalization and social exclusion. (Cf. art.3.2.). The analysis of such services shows that primary services cover most universal prevention activities and only a small part of selective prevention measures, without all functions or powers in the area of prevention index (cf. Daro, Killeen, 2003: 19).

For comparison, we analyze specialized public services too, that is thus established by the government at county level, according to art. 3.4. of the above Ordinance. Those are social services aimed at maintaining, restoring or developing individual capacity to overcome a situation of social need and according to the law they are considered to represent the rule of law, because (although they are provided by the legislation in force) other institutions that provide public specialized services from the Romanian state no longer exist.

The analysis of public service skills shows that their work covers part of what is supposed to be the prevention of selective type and index.

But, on child protection, paragraph 4 of Article 5 of Law 272/2004 specifies that state intervention is complementary; **the state ensures child protection** (our emphasis) and guarantees that all the rights through a specific activity performed by state institutions and public authorities with responsibilities in this area will be respected.

Or the same law, Article 39 provides that any child who is temporarily or permanently deprived of parental care or who can't be left in their care in order to protect its interests is entitled to alternative care. Alternative protection includes *establishing guardianship, special protective measures provided for in this law and adoption*. As special protection means emergency placement, placement and specialized supervision (for delinquent child), we note that, besides specialized supervision measure, all other measures that provide protection involve child's separation from family and / or native environment. These provisions are likely to induce to specialists the orientation how to run an intervention and to determine its limits.

Even if paragraph 2. Article. 34 states that any separation of children from their parents, and any restrictions on the exercise of parental rights must be preceded by providing systematic services and benefits provided by law, with particular emphasis on appropriate information to parents, counseling, therapy and mediation granted under a service plan, the analysis of legislation shows that for the child victim of an abuse or neglect the intervention requires from the very beginning a separation from the family or native environment, brushes off independently

from intervention in the family to increase parenting skills and child secure. And this becomes even more evident when we remember that the local government powers and responsibilities assigned only to the prevention of universal and not selective and indicated prevention that would be required to take place in cases of violence against children.

Also, provision of primary social services "according to a plan" raises another major issue in Romanian social assistance. Although Law 272/2004 provides that those who occupy decision-making functions for the child's future should have training in the field, rural municipality secretary and social referent, not necessarily trained in the field are the ones who draw service plan, and the mayor approves it, in most cases without initial guidance (training) in child protection. There are also the secretaries of mayor and mayor referent who constitute the guardianship authority, which, in accordance with Family Code and the laws in force in Romania is asked to rule on child custody in the case of divorce of parents as the guardianship and placement of children in need.

The law text also suggests the possibility of segregation for a long period of time and does not require the conduct of joint efforts for family reintegration. Thus, in art. 51 of Law 272 is the following provision: "The child shall enjoy special protection under this law to acquire full legal capacity. (...) At the request of the young, expressed after acquiring the full capacity to exercise, if he continues his studies in a formative time education, special protection is granted under the law, on the duration of further study, but not older than 26 years."

Therefore, in cases of violence against children, intervention measures go beyond the categories of prevention and are carried out by separation (the measure of placement and placement of emergency) the environmental victim for a longer time, without further intervention in order to improve and to eliminate risks for the child. Another issue which requires to be considered is a separate approach of the child and mother, victims of domestic violence, the elderly and other categories of beneficiaries of social protection and separate approach to their health, while even the models of western inspiration orient social action for the whole family (even if a family includes elderly, disabled, children, homeless etc. it still remains the family – an essential support element of any member in case of difficulty, vulnerability, marginalization and social exclusion).

Moreover, in many cases state action is aimed at a healthy family, where ministerial responsibilities are unified under a model that guides the action after systemic models with a global vision of the family and its members (Ministry of Health and Family or Ministry of Social Action). In our ministries names change but the purpose was merely to facilitate the removal of the previous policy of ministries gaskets and enthronement of the latest political clique came. Intervention in child protection situation commits criminal acts twofold: the child who commits criminal case but doesn't have criminal responsibility and state delinquent child in a position to carry custodial sentences, no matter how they are called.

If the child who commits crimes isn't criminally responsible, the legislation (Chapter V Child Protection who has committed a criminal act and isn't criminally responsible of Law 272/2004, Government Decision no. 1439 of September 2, 2004 and GD nr.1438 of September 2, 2004) states that the main ways in which the child becomes the beneficiary of specialized services for children who have committed a criminal act and isn't criminally responsible are reference by authorized bodies (courts) to the general direction of social assistance and child protection or disposition by the Commission for Child Protection when there is parental consent or other legal representative of the child, or, as appropriate, the court, when this agreement is missing, decides the specialized supervision measure.

According to Romanian procedures, if child is under 14 years old or he is between 14-16 years, but the child is injudicious, he receives "NUP – non-initiation of criminal prosecution" because of age and the case file does not reach to the judge to determine specialized supervision measure or to refer DASPC. Also, if the child with behavioral problems in the area of crime does not create great turmoil in the local school or public order, the case is presented to the Commission for Child Protection, and therefore the child does not get to be admitted to the service assessment, counseling and prevention of child separation, which increases his chances of relapse without any minimal specialized intervention. That is happening while the establishment of prevention of any local government level is hampered by the same Romanian state by poor policy in the absorption of European funds.

The other extreme is the rehabilitation centers, places that run educational measures that are not considered punishment (confinement in a rehabilitation center, hospitalization in a medical education). Although some of these facilities and arrangements were assessed to international standards (because of the the visit of UN representatives in

the Center for Juvenile Buziaș on November 28, 2008), we could not but note that the activity of the rehabilitation be held at above mentioned findings on Decree no. 545 on the execution of custodial educational measure (published in B. Of. No. 162 of December 3. In 1972 - became law no. 14 of 1973).

This decree replaced the name of Rehabilitation Institute with Rehabilitation Center, the name existing even nowadays, and is a replay without any change in substance and vision of the Decree 75/S/1951 (which provided that the rehabilitation institutions for juvenile offenders should no longer be under the Ministry of the Interior, but under the Ministry of Social Provisions), completed over the years with provisions of the socialist Criminal Code and Law no. 3 for the protection of minors.

3. Conclusions

We note that this analysis is contemporary with withdrawal / abdication of the Romanian state from the position of the social welfare state precisely at a time when the welfare state was expected to be the general trend of the EU Member States. Clinical analysis elements of the intervention in child protection in Romania require an urgent practical intervention activity aimed at organizing a unified and integrated social protection activities and the health of the recipient to correct existing problems and to build on a new paradigm of social approach.

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